

Calendar No. 936

106TH CONGRESS
2D SESSION**S. 1756****[Report No. 106–487]**

To enhance the ability of the National Laboratories to meet Department
of Energy missions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 1999

Mr. BINGAMAN (for himself, Mrs. MURRAY, Mr. DOMENICI, and Mr. GORTON)
introduced the following bill; which was read twice and referred to the
Committee on Energy and Natural Resources

OCTOBER 4 (legislative day, SEPTEMBER 22), 2000

Reported by Mr. MURKOWSKI, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To enhance the ability of the National Laboratories to meet
Department of Energy missions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Laboratories
5 Partnership Improvement Act of 1999.”

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The National Laboratories play a crucial
4 role in the Department of Energy's ability to achieve
5 its missions in national security, science, energy, and
6 environment.

7 (2) The National Laboratories must be on the
8 leading edge of advances in science and technology
9 to help the Department to achieve its missions.

10 (3) The private sector is now performing a
11 much larger share of the Nation's research and de-
12 velopment activities, and is on the leading edge of
13 many technologies that could be adapted to meet de-
14 partmental missions.

15 (4) To be able to help the Department to
16 achieve its missions in the most cost effective man-
17 ner, the National Laboratories must take advantage,
18 to the greatest extent practicable, of the scientific
19 and technological expertise that exists in the private
20 sector, as well as at leading universities, through
21 joint research and development projects, personnel
22 exchanges, and other arrangements.

23 (5) The Department needs to strengthen the re-
24 gional technology infrastructure of firms, research
25 and academic institutions, non-profit and govern-
26 mental organizations, and work force around its Na-

1 tional Laboratories to maintain the long-term vital-
 2 ity of the laboratories and ensure their continued ac-
 3 cess to the widest range of high quality research,
 4 technology and personnel.

5 **SEC. 3. DEFINITIONS.**

6 For purposes of this Act, except for sections 8 and
 7 9—

8 (1) the term “Department” means the Depart-
 9 ment of Energy;

10 (2) the term “departmental mission” means
 11 any of the functions vested in the Secretary of En-
 12 ergy by the Department of Energy Organization Act
 13 (42 U.S.C. 7101 et seq.) or other law;

14 (3) the term “institution of higher education”
 15 has the meaning given such term in section 1201(a)
 16 of the Higher Education Act of 1965 (20 U.S.C.
 17 1141(a));

18 (4) the term “multiprogram National Labora-
 19 tory” means any of the following institutions owned
 20 by the Department of Energy—

21 (A) Argonne National Laboratory;

22 (B) Brookhaven National Laboratory;

23 (C) Idaho National Engineering and Envi-
 24 ronmental Laboratory;

1 ~~(D) Lawrence Berkeley National Labora-~~
2 ~~tory;~~

3 ~~(E) Lawrence Livermore National Labora-~~
4 ~~tory;~~

5 ~~(F) Los Alamos National Laboratory;~~

6 ~~(G) Oak Ridge National Laboratory;~~

7 ~~(H) Pacific Northwest National Labora-~~
8 ~~tory;~~

9 ~~(I) Sandia National Laboratory;~~

10 ~~(5) the term “National Laboratory or facility”~~
11 ~~means any of the multiprogram National Labora-~~
12 ~~tories or any of the following institutions owned by~~
13 ~~the Department of Energy—~~

14 ~~(A) Ames Laboratory;~~

15 ~~(B) East Tennessee Technology Park;~~

16 ~~(C) Environmental Measurement Labora-~~
17 ~~tory;~~

18 ~~(D) Federal Energy Technology Center;~~

19 ~~(E) Fermi National Accelerator Labora-~~
20 ~~tory;~~

21 ~~(F) National Renewable Energy Labora-~~
22 ~~tory;~~

23 ~~(G) Nevada Test Site;~~

24 ~~(H) Princeton Plasma Physics Laboratory;~~

25 ~~(I) Savannah River Technology Center;~~

1 ~~(J)~~ Stanford Linear Accelerator Center;

2 ~~(K)~~ Thomas Jefferson National Accelerator Facility;

3 ~~(L)~~ Waste Isolation Pilot Plant; or

4 ~~(M)~~ other similar organization of the Department designated by the Secretary that engages in technology transfer activities;

5 ~~(6)~~ the term “nonprofit institution” has the meaning given such term in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(5));

6 ~~(7)~~ the term “Secretary” means the Secretary of Energy;

7 ~~(8)~~ the term “small business concern” has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632);

8 ~~(9)~~ the term “technology-related business concern” means a for-profit corporation, company, association, firm, partnership, or small business concern that—

9 ~~(A)~~ conducts scientific or engineering research;

10 ~~(B)~~ develops new technologies;

11 ~~(C)~~ manufactures products based on new technologies; or

1 ~~(D)~~ performs technological services; and

2 ~~(10)~~ the term “technology cluster” means a ge-
 3 ographic concentration of—

4 ~~(A)~~ technology-related business concerns;

5 ~~(B)~~ institutions of higher education; or

6 ~~(C)~~ other nonprofit institutions;

7 that reinforce each other’s performance through for-
 8 mal or informal relationships.

9 **SEC. 4. REGIONAL TECHNOLOGY INFRASTRUCTURE PRO-**
 10 **GRAM.**

11 ~~(a)~~ ESTABLISHMENT.—The Secretary shall establish
 12 a Regional Technology Infrastructure Program in accord-
 13 ance with this section.

14 ~~(b)~~ PURPOSE.—The purpose of the program shall be
 15 to improve the ability of National Laboratories or facilities
 16 to support departmental missions by—

17 ~~(1)~~ stimulating the development of technology
 18 clusters in the vicinity of National Laboratories or
 19 facilities;

20 ~~(2)~~ improving the ability of National Labora-
 21 tories or facilities to leverage commercial research,
 22 technology, products, processes, and services; and

23 ~~(3)~~ encouraging the exchange of scientific and
 24 technological expertise between National Labora-
 25 tories or facilities and—

1 (A) institutions of higher education;
2 (B) technology-related business concerns;
3 (C) nonprofit institutions; and
4 (D) agencies of State, tribal, or local
5 governments—

6 that are located in the vicinity of a National Labora-
7 tory or facility.

8 (e) PROGRAM PHASES.—The Secretary shall conduct
9 the Regional Technology Infrastructure Program in two
10 phases as follows:

11 (1) PILOT PHASE.—No later than six months
12 after the date of enactment of this Act, the Sec-
13 retary shall provide \$1,000,000 to each of the multi-
14 program National Laboratories to conduct Regional
15 Technology Infrastructure Program pilots.

16 (2) FULL IMPLEMENTATION.—Not later than
17 eighteen months after the date of enactment of this
18 Act, the Secretary shall expand or alter the Regional
19 Technology Infrastructure Program to include
20 whichever National Laboratories or facilities the
21 Secretary determines to be appropriate based upon
22 the experience of the program to date and the extent
23 to which the pilot projects under paragraph (1) met
24 the requirements of subsections (e) and (f).

1 (d) ~~PROJECTS.~~—The Secretary shall authorize the di-
 2 rector of each National Laboratory or facility designated
 3 under subsection (e) to implement the Regional Tech-
 4 nology Infrastructure Program at such National Labora-
 5 tory or facility through projects that meet the require-
 6 ments of subsections (e) and (f).

7 (e) ~~PROGRAM REQUIREMENTS.~~—Each project funded
 8 under this program shall meet the following requirements:

9 (1) ~~MINIMUM PARTICIPANTS.~~—Each project
 10 shall at a minimum include—

11 (A) a National Laboratory or facility;

12 (B) a business located within the vicinity
 13 of the participating National Laboratory or fa-
 14 cility; and

15 (C) one or more of the following entities
 16 that is located within the vicinity of the partici-
 17 pating National Laboratory or facility—

18 (i) an institution of higher education;

19 (ii) a nonprofit institution;

20 (iii) an agency of a State, local, or
 21 tribal government, or

22 (iv) an additional business.

23 (2) ~~COST SHARING.~~—

24 (A) ~~MINIMUM AMOUNT.~~—Not less than 50
 25 percent of the costs of each project funded

1 under this section shall be provided from non-
2 Federal sources.

3 ~~(B) QUALIFIED FUNDING AND RE-~~
4 ~~SOURCES.—~~

5 (i) The calculation of costs paid by
6 the non-Federal sources to a project shall
7 include cash, personnel, services, equip-
8 ment, and other resources expended on the
9 project.

10 (ii) Independent research and develop-
11 ment expenses of Government contractors
12 that qualify for reimbursement under sec-
13 tion ~~31–205–18(c)~~ of the Federal Acquisi-
14 tion Regulations issued pursuant to section
15 ~~25(c)(1)~~ of the Office of Federal Procure-
16 ment Policy Act (~~41 U.S.C. 421(c)(1)~~)
17 may be credited towards costs paid by non-
18 Federal sources to a project, if the ex-
19 penses meet the other requirements of this
20 section.

21 (iii) No funds or other resources ex-
22 pended either before the start of a project
23 under this program or outside the project's
24 scope of work shall be credited toward the

1 costs paid by the non-Federal sources to
 2 the project.

3 ~~(3)~~ COMPETITIVE SELECTION.—All projects
 4 where a party other than the Department or a Na-
 5 tional Laboratory or facility receives funding under
 6 this program shall be competitively selected using
 7 procedures determined to be appropriate by the Sec-
 8 retary.

9 ~~(4)~~ ACCOUNTING STANDARDS.—Any partici-
 10 pants receiving funding under this program, other
 11 than a National Laboratory or facility, may use gen-
 12 erally accepted accounting principles for maintaining
 13 accounts, books, and records relating to the project.

14 ~~(5)~~ LIMITATIONS.—No Federal funds shall be
 15 made available under this program for—

16 ~~(A)~~ construction; or

17 ~~(B)~~ any project for more than five years.

18 ~~(f)~~ CRITERIA.—

19 ~~(1)~~ MANDATORY CRITERIA.—The Secretary
 20 shall not authorize the provision of Federal funds
 21 for a project under this section unless there is a de-
 22 termination by the Director of the National Labora-
 23 tory or facility managing the project that the project
 24 is likely—

1 (A) to succeed, based on its technical
2 merit, team members, management approach,
3 resources, and project plan; and

4 (B) to improve the participating National
5 Laboratory or facility's ability to achieve tech-
6 nical success in meeting departmental missions;
7 promote the commercial development of techno-
8 logical innovations made at such Laboratory or
9 facility; and use commercial innovations to
10 achieve its missions.

11 (2) ~~ADDITIONAL CRITERIA.~~—The Secretary
12 shall also require the consideration of the following
13 factors by the Director of the National Laboratory
14 or facility managing projects under this section in
15 providing Federal funds to projects under this
16 section—

17 (A) the potential of the project to promote
18 the development of a commercially sustainable
19 technology cluster; one that will derive most of
20 the demand for its products or services from
21 the private sector; in the vicinity of the partici-
22 pating National Laboratory or facility;

23 (B) the commitment shown by non-Federal
24 organizations to the project, based primarily on

1 the nature and amount of the financial and
2 other resources they will risk on the project;

3 ~~(C)~~ the extent to which the project involves
4 a wide variety and number of institutions of
5 higher education, nonprofit institutions, and
6 technology-related business concerns located in
7 the vicinity of the participating National Lab-
8 oratory or facility that will make substantive
9 contributions to achieving the goals of the
10 project;

11 ~~(D)~~ the extent of participation in the
12 project by agencies of State, tribal, or local gov-
13 ernments that will make substantive contribu-
14 tions to achieving the goals of the project;

15 ~~(E)~~ the extent to which the project focuses
16 on promoting the development of technology-re-
17 lated business concerns that are small business
18 concerns located in the vicinity of the National
19 Laboratory or facility or involves such small
20 business concerns substantively in the project.

21 ~~(3)~~ SAVINGS CLAUSE.—Nothing in this sub-
22 section shall limit the Secretary from requiring the
23 consideration of other factors, as appropriate, in de-
24 termining whether to fund projects under this sec-
25 tion.

1 **SEC. 5. SMALL BUSINESS ADVOCACY AND ASSISTANCE.**

2 (a) **ADVOCACY FUNCTION.**—The Secretary shall di-
 3 rect the Director of each multiprogram National Labora-
 4 tory, and may direct the Director of each other National
 5 Laboratory or facility the Secretary determines to be ap-
 6 propriate, to establish a small business advocacy function
 7 that is organizationally independent of the procurement
 8 function at the National Laboratory or facility. The mis-
 9 sion of the small business advocacy function shall be to
 10 increase the participation of small business concerns, par-
 11 ticularly those small business concerns located near the
 12 laboratory and small business concerns that are owned by
 13 women or minorities, in procurements and collaborative
 14 research conducted by the National Laboratory or facility.
 15 The person or office vested with the small business advo-
 16 cacy function shall—

17 (1) report to the Director of the National Lab-
 18 oratory or facility on the actual participation of
 19 small business concerns in procurements and col-
 20 laborative research along with recommendations, if
 21 appropriate, on how to improve participation;

22 (2) make available to small business concerns
 23 training, mentoring, and clear, up-to-date informa-
 24 tion on how to participate in the procurements and
 25 collaborative research, including how to submit effec-
 26 tive proposals;

1 ~~(3)~~ increase the awareness inside the National
 2 Laboratory or facility of the capabilities and oppor-
 3 tunities presented by small business concerns; and

4 ~~(4)~~ establish guidelines for the program under
 5 subsection (b) and report on the effectiveness of
 6 such program to the Director of the National Lab-
 7 oratory or facility.

8 ~~(b) ESTABLISHMENT OF SMALL BUSINESS ASSIST-~~
 9 ~~ANCE PROGRAM.~~—The Secretary shall direct the Director
 10 of each multiprogram National Laboratory, and may di-
 11 rect the Director of each other National Laboratory or fa-
 12 cility the Secretary determines to be appropriate, to estab-
 13 lish a program to provide small business concerns—

14 ~~(1)~~ assistance directed at making them more ef-
 15 fective and efficient subcontractors or suppliers to
 16 the National Laboratory or facility; or

17 ~~(2)~~ general technical assistance to improve the
 18 small business concern's products or services.

19 ~~(c) USE OF FUNDS.~~—None of the funds expended on
 20 a program under subsection (b) may be used for direct
 21 grants to the small business concerns.

22 **SEC. 6. TECHNOLOGY PARTNERSHIPS OMBUDSMAN.**

23 ~~(a) APPOINTMENT OF OMBUDSMAN.~~—The Secretary
 24 shall direct the Director of each multiprogram National
 25 Laboratory, and may direct the Director of each other Na-

1 tional Laboratory or facility the Secretary determines to
 2 be appropriate, to appoint a technology partnership om-
 3 budsman to hear and help resolve complaints from outside
 4 organizations regarding each laboratory's policies and ac-
 5 tions with respect to technology partnerships (including
 6 cooperative research and development agreements), pat-
 7 ents, and technology licensing. Each ombudsman shall—

8 (1) be a senior official of the National Labora-
 9 tory or facility who is not involved in day-to-day
 10 technology partnerships, patents, or technology li-
 11 censing; and

12 (2) report to the Director of the National Lab-
 13 oratory or facility.

14 (b) DUTIES.—Each ombudsman shall—

15 (1) serve as the focal point for assisting the
 16 public and industry in resolving complaints and dis-
 17 putes with the laboratory regarding technology part-
 18 nerships, patents, and technology licensing;

19 (2) promote the use of collaborative alternative
 20 dispute resolution techniques such as mediation to
 21 facilitate the speedy and low-cost resolution of com-
 22 plaints and disputes, when appropriate; and

23 (3) report, through the Director of the National
 24 Laboratory or facility, to the Department annually
 25 on the number and nature of complaints and dis-

1 putes raised, along with the ombudsman's assess-
2 ment of their resolution, consistent with the protec-
3 tion of confidential and sensitive information.

4 **SEC. 7. MOBILITY OF TECHNICAL PERSONNEL.**

5 (a) GENERAL POLICY.—Not later than two years
6 after the enactment of this Act, the Secretary shall ensure
7 that each contractor operating a National Laboratory or
8 facility has policies and procedures, including an employee
9 benefits program, that do not create disincentives to the
10 transfer of scientific and technical personnel among the
11 contractor-operated National Laboratory or facilities.

12 (b) EXTENSION.—The Secretary may delay imple-
13 mentation of the policy in subsection (a) if the Secretary—

14 (1) determines that the implementation of the
15 policy within two years would be unnecessarily ex-
16 pensive or disruptive to the operations of the con-
17 tractor-operated National Laboratory or facilities;
18 and

19 (2) recommends to Congress alternative meas-
20 ures to increase the mobility of technical personnel
21 among the contractor-operated National Laboratory
22 or facilities.

23 (c) STUDY OF WIDER MOBILITY.—Not later than
24 two years after the enactment of this Act, the Secretary
25 shall recommend to Congress legislation to reduce any

1 undue disincentives to scientific and technical personnel
 2 employed by a contractor-operated National Laboratory or
 3 facility taking a job with an institution of higher edu-
 4 cation, nonprofit institution, or technology-related busi-
 5 ness concern that is located in the vicinity of the National
 6 Laboratory or facility.

7 **SEC. 8. OTHER TRANSACTIONS AUTHORITY.**

8 Section 646 of the Department of Energy Organiza-
 9 tion Act (42 U.S.C. 7256) is amended by adding at the
 10 end the following new subsection:

11 “(g)(1) In addition to other authorities granted to the
 12 Secretary to enter into procurement contracts, leases, co-
 13 operative agreements, grants, and other similar arrange-
 14 ments, the Secretary may enter into other transactions
 15 with public agencies, private organizations, or persons on
 16 such terms as the Secretary may deem appropriate in fur-
 17 therance of functions now or hereafter vested in the Sec-
 18 retary, including research, development, or demonstration
 19 projects. Such other transactions shall not be subject to
 20 the provisions of section 9 of the Federal Nonnuclear En-
 21 ergy Research and Development Act of 1974 (42 U.S.C.
 22 5908).

23 “(2)(A) The Secretary shall not disclose any trade
 24 secret or commercial or financial information submitted

1 by a non-Federal entity under paragraph (1) that is privi-
 2 leged and confidential.

3 “(B) The Secretary shall not disclose, for five years
 4 after the date the information is received, any other infor-
 5 mation submitted by a non-Federal entity under para-
 6 graph (1), including any proposal, proposal abstract, docu-
 7 ment supporting a proposal, business plan, or technical
 8 information that is privileged and confidential.

9 “(C) The Secretary may protect from disclosure, for
 10 up to five years, any information developed pursuant to
 11 a transaction under paragraph (1) that would be protected
 12 from disclosure under section 552(b)(4) of title 5, United
 13 States Code, if obtained from a person other than a Fed-
 14 eral agency.”.

15 **SEC. 9. AMENDMENTS TO THE STEVENSON-WYDLER ACT.**

16 (a) **STRATEGIC PLANS.**—Section 12(a) of the Steven-
 17 son-Wydler Technology Innovation Act of 1980 (15 U.S.C.
 18 3710a(a)) is amended by inserting after “joint work state-
 19 ment” the following: “or, if permitted by the agency, in
 20 an agency-approved annual strategic plan.”.

21 (b) **FEDERAL WAIVERS.**—Subsection 12(b) of the
 22 Stevenson-Wydler Technology Innovation Act of 1980 (15
 23 U.S.C. 3710a(b)) is amended by adding at the end the
 24 following:

1 “(6) The director of a government-operated lab-
 2 oratory (in the case of a Government operated lab-
 3 oratory) or a designated official of the agency (in
 4 the case of a contractor-operated laboratory) may
 5 waive any license retained by the Government under
 6 paragraphs (1)(A), 2, or 3(D) in whole or in part
 7 and according to negotiated terms and conditions if
 8 the director or designated official, as appropriate,
 9 finds that the requirement for the license would sub-
 10 stantially inhibit the commercialization of an inven-
 11 tion that would otherwise serve an important Fed-
 12 eral mission.”.

13 (c) TIME REQUIRED FOR APPROVAL.—Section
 14 12(e)(5) of the Stevenson-Wydler Technology Innovation
 15 Act of 1980 (15 U.S.C. 3710a(e)(5)) is amended—

16 (1) by striking subparagraph (C);

17 (2) by redesignating subparagraph (D) as sub-
 18 paragraph (C);

19 (3) by striking “with a small business firm”
 20 and inserting “if” after “statement” in subpara-
 21 graph (C)(i) (as redesignated); and

22 (4) by adding after subparagraph (C)(iii) (as
 23 redesignated) the following:

24 “(iv) Any agency that has contracted
 25 with a non-Federal entity to operate a lab-

oratory may develop and provide to such
 laboratory one or more model cooperative
 research and development agreements, for
 the purposes of standardizing practices
 and procedures, resolving common legal
 issues, and enabling review of cooperative
 research and development agreements to
 be carried out in a routine and prompt
 manner.

“(v) A federal agency may waive the
 requirements of clause (i) or (ii) under
 such circumstances as the agency deems
 appropriate. However, the agency may not
 take longer than 30 days to review and ap-
 prove, request modifications to, or dis-
 approve any proposed agreement or joint
 work statement that it elects to receive.”.

SECTION 1. SHORT TITLE.

*This Act may be cited as the “National Laboratories
 Partnership Improvement Act of 2000”.*

SEC. 2. DEFINITIONS.

For purposes of this Act—

*(1) the term “Department” means the Depart-
 ment of Energy;*

1 (2) *the term “departmental mission” means any*
 2 *of the functions vested in the Secretary of Energy by*
 3 *the Department of Energy Organization Act (42*
 4 *U.S.C. 7101 et seq.) or other law;*

5 (3) *the term “institution of higher education”*
 6 *has the meaning given such term in section 1201(a)*
 7 *of the Higher Education Act of 1965 (20 U.S.C.*
 8 *1141(a));*

9 (4) *the term “National Laboratory” means any*
 10 *of the following institutions owned by the Department*
 11 *of Energy—*

12 (A) *Argonne National Laboratory;*

13 (B) *Brookhaven National Laboratory;*

14 (C) *Idaho National Engineering and Envi-*
 15 *ronmental Laboratory;*

16 (D) *Lawrence Berkeley National Labora-*
 17 *tory;*

18 (E) *Lawrence Livermore National Labora-*
 19 *tory;*

20 (F) *Los Alamos National Laboratory;*

21 (G) *National Renewable Energy Labora-*
 22 *tory;*

23 (H) *Oak Ridge National Laboratory;*

24 (I) *Pacific Northwest National Laboratory;*

25 *or*

1 (J) Sandia National Laboratory;

2 (5) the term “facility” means any of the fol-
3 lowing institutions owned by the Department of
4 Energy—

5 (A) Ames Laboratory;

6 (B) East Tennessee Technology Park;

7 (C) Environmental Measurement Labora-
8 tory;

9 (D) Fermi National Accelerator Laboratory;

10 (E) Kansas City Plant;

11 (F) National Energy Technology Labora-
12 tory;

13 (G) Nevada Test Site;

14 (H) Princeton Plasma Physics Laboratory;

15 (I) Savannah River Technology Center;

16 (J) Stanford Linear Accelerator Center;

17 (K) Thomas Jefferson National Accelerator
18 Facility;

19 (L) Waste Isolation Pilot Plant;

20 (M) Y-12 facility at Oak Ridge National
21 Laboratory; or

22 (N) other similar organization of the De-
23 partment designated by the Secretary that en-
24 gages in technology transfer, partnering, or li-
25 censing activities;

1 (6) the term “nonprofit institution” has the
 2 meaning given such term in section 4 of the Steven-
 3 son-Wydler Technology Innovation Act of 1980 (15
 4 U.S.C. 3703(5));

5 (7) the term “Secretary” means the Secretary of
 6 Energy;

7 (8) the term “small business concern” has the
 8 meaning given such term in section 3 of the Small
 9 Business Act (15 U.S.C. 632);

10 (9) the term “technology-related business con-
 11 cern” means a for-profit corporation, company, asso-
 12 ciation, firm, partnership, or small business concern
 13 that—

14 (A) conducts scientific or engineering re-
 15 search,

16 (B) develops new technologies,

17 (C) manufactures products based on new
 18 technologies, or

19 (D) performs technological services;

20 (10) the term “technology cluster” means a con-
 21 centration of—

22 (A) technology-related business concerns;

23 (B) institution of higher education; or

24 (C) other nonprofit institutions,

1 *that reinforce each other’s performance through for-*
 2 *mal or informal relationships;*

3 (11) *the term “socially and economically dis-*
 4 *advantaged small business concerns” has the meaning*
 5 *given such term in section 8(a)(4) of the Small Busi-*
 6 *ness Act (15 U.S.C. 637(a)(4)); and*

7 (12) *the term “NNSA” means the National Nu-*
 8 *clear Security Administration established by Title*
 9 *XXXII of National Defense Authorization Act for Fis-*
 10 *cal Year 2000 (Public Law 106–65).*

11 **SEC. 3. TECHNOLOGY INFRASTRUCTURE PILOT PROGRAM.**

12 (a) *ESTABLISHMENT.*—*The Secretary, through the ap-*
 13 *propriate officials of the Department, shall establish a Tech-*
 14 *nology Infrastructure Pilot Program in accordance with*
 15 *this section.*

16 (b) *PURPOSE.*—*The purpose of the program shall be*
 17 *to improve the ability of National Laboratories or facilities*
 18 *to support departmental missions by—*

19 (1) *stimulating the development of technology*
 20 *clusters that can support the missions of the National*
 21 *Laboratories or facilities;*

22 (2) *improving the ability of National Labora-*
 23 *tories or facilities to leverage and benefit from com-*
 24 *mercial research, technology, products, processes, and*
 25 *services; and*

1 (3) *encouraging the exchange of scientific and*
2 *technological expertise between National Laboratories*
3 *or facilities and—*

4 (A) *institutions of higher education,*

5 (B) *technology-related business concerns,*

6 (C) *nonprofit institutions, and*

7 (D) *agencies of State, tribal, or local gov-*
8 *ernments,*

9 *that can support the missions of the National Labora-*
10 *tories and facilities.*

11 (c) *PILOT PROGRAM.—In each of the first three fiscal*
12 *years after the date of enactment of this section, the Sec-*
13 *retary may provide no more than \$10,000,000, divided*
14 *equally, among no more than ten National Laboratories or*
15 *facilities selected by the Secretary to conduct Technology In-*
16 *frastructure Program Pilot Programs.*

17 (d) *PROJECTS.—The Secretary shall authorize the Di-*
18 *rector of each National Laboratory or facility designated*
19 *under subsection (c) to implement the Technology Infra-*
20 *structure Pilot Program at such National Laboratory or fa-*
21 *cility through projects that meet the requirements of sub-*
22 *sections (e) and (f).*

23 (e) *PROGRAM REQUIREMENTS.—Each project funded*
24 *under this section shall meet the following requirements:*

1 (1) *MINIMUM PARTICIPANTS.*—*Each project shall*
 2 *at a minimum include—*

3 (A) *a National Laboratory of facility; and*

4 (B) *one of the following entities—*

5 (i) *a business,*

6 (ii) *an institution of higher education,*

7 (iii) *a nonprofit institution, or*

8 (iv) *an agency of a State, local, or*
 9 *tribal government.*

10 (2) *COST SHARING.*—

11 (A) *MINIMUM AMOUNT.*—*Not less than 50*
 12 *percent of the costs of each project funded under*
 13 *this section shall be provided from non-Federal*
 14 *sources.*

15 (B) *QUALIFIED FUNDING AND RE-*
 16 *SOURCES.*—

17 (i) *The calculation of costs paid by the*
 18 *non-Federal sources to a project shall in-*
 19 *clude cash, personnel, services, equipment,*
 20 *and other resources expended on the project.*

21 (ii) *Independent research and develop-*
 22 *ment expenses of government contractors*
 23 *that qualify for reimbursement under sec-*
 24 *tion 31–205–18(e) of the Federal Acquisi-*
 25 *tion Regulations issued pursuant to section*

1 25(c)(1) of the Office of Federal Procure-
 2 ment Policy Act (41 U.S.C. 421(c)(1)) may
 3 be credited towards costs paid by non-Fed-
 4 eral sources to a project, if the expenses
 5 meet the other requirements of this section.

6 (iii) No funds or other resources ex-
 7 pended either before the start of a project
 8 under this section or outside the project's
 9 scope of work shall be credited toward the
 10 costs paid by the non-Federal sources to the
 11 project.

12 (3) *COMPETITIVE SELECTION.*—All projects
 13 where a party other than the Department or a Na-
 14 tional Laboratory or facility receives funding under
 15 this section shall, to the extent practicable, be com-
 16 petitively selected by the National Laboratory or fa-
 17 cility using procedures determined to be appropriate
 18 by the Secretary or his designee.

19 (4) *ACCOUNTING STANDARDS.*—Any participant
 20 receiving funding under this section, other than a Na-
 21 tional Laboratory or facility, may use generally ac-
 22 cepted accounting principles for maintaining ac-
 23 counts, books, and records relating to the project.

24 (5) *LIMITATIONS.*—No Federal funds shall be
 25 made available under this section for—

1 (A) construction; or

2 (B) any project for more than five years.

3 (f) *SELECTION CRITERIA.*—

4 (1) *THRESHOLD FUNDING CRITERIA.*—*The Sec-*
5 *retary shall authorize the provision of Federal funds*
6 *for projects under this section only when the Director*
7 *of the National Laboratory or facility managing such*
8 *a project determines that the project is likely to im-*
9 *prove the participating National Laboratory or facili-*
10 *ty's ability to achieve technical success in meeting de-*
11 *partmental missions.*

12 (2) *ADDITIONAL CRITERIA.*—*The Secretary shall*
13 *also require the Director of the National Laboratory*
14 *or facility managing a project under this section to*
15 *consider the following criteria in selecting a project to*
16 *receive federal funds—*

17 (A) *the potential of the project to succeed,*
18 *based on its technical merit, team members,*
19 *management approach, resources, and project*
20 *plan;*

21 (B) *to potential of the project to promote*
22 *the development of a commercially sustainable*
23 *technology cluster, one that will derive most of*
24 *the demand for its products or services from the*
25 *private sector, that can support the missions of*

1 *the participating National Laboratory or facil-*
2 *ity;*

3 *(C) the potential of the project to promote*
4 *the use of commercial research, technology, prod-*
5 *ucts, processes, and services by the participating*
6 *National Laboratory or facility to achieve its de-*
7 *partmental mission or the commercial develop-*
8 *ment of technological innovations made at the*
9 *participating National Laboratory or facility;*

10 *(D) the commitment shown by non-Federal*
11 *organizations to the project, based primarily on*
12 *the nature and amount of the financial and*
13 *other resources they will risk on the project;*

14 *(E) the extent to which the project involves*
15 *a wide variety and number of institutions of*
16 *higher education, nonprofit institutions, and*
17 *technology-related business concerns that can*
18 *support the missions of the participating Na-*
19 *tional Laboratory or facility and that will make*
20 *substantive contributions to achieving the goals*
21 *of the project;*

22 *(F) the extent of participation in the project*
23 *by agencies of State, tribal, or local governments*
24 *that will make substantive contributions to*
25 *achieving the goals of the project; and*

1 (G) *the extent to which the project focuses*
 2 *on promoting the development of technology-re-*
 3 *lated business concerns that are small business*
 4 *concerns or involves such small business concerns*
 5 *substantively in the project.*

6 (3) *SAVINGS CLAUSE.—Nothing in this sub-*
 7 *section shall limit the Secretary from requiring the*
 8 *consideration of other criteria, as appropriate, in de-*
 9 *termining whether projects should be funded under*
 10 *this section.*

11 (g) *REPORT TO CONGRESS ON FULL IMPLEMENTA-*
 12 *TION.—Not later than 120 days after the start of the third*
 13 *fiscal year after the date of enactment of this section, the*
 14 *Secretary shall report to Congress on whether the Tech-*
 15 *nology Infrastructure Program should be continued beyond*
 16 *the pilot stage, and, if so, how the fully implemented pro-*
 17 *gram should be managed. This report shall take into consid-*
 18 *eration the results of the pilot program to date the views*
 19 *of the relevant Directors of the National laboratories and*
 20 *facilities. The report shall include any proposals for legisla-*
 21 *tion considered necessary by the Secretary to fully imple-*
 22 *ment the program.*

23 **SEC. 4. SMALL BUSINESS ADVOCACY AND ASSISTANCE.**

24 (a) *ADVOCACY FUNCTION.—The Secretary shall direct*
 25 *the Director of each National Laboratory, and may direct*

1 *the Director of each facility the Secretary determines to be*
2 *appropriate, to establish a small business advocacy function*
3 *that is organizationally independent of the procurement*
4 *function at the National Laboratory or facility. The person*
5 *or office vested with the small business advocacy function*
6 *shall—*

7 (1) *work to increase the participation of small*
8 *business concerns, including socially and economi-*
9 *cally disadvantaged small business concerns, in pro-*
10 *curements, collaborative research, technology licens-*
11 *ing, and technology transfer activities conducted by*
12 *the National Laboratory or facility;*

13 (2) *report to the Director of the National Lab-*
14 *oratory or facility on the actual participation of*
15 *small business concerns in procurements and collabo-*
16 *rative research along with recommendations, if appro-*
17 *priate, on how to improve participation;*

18 (3) *make available to small business concerns*
19 *training, mentoring, and clear, up-to-date informa-*
20 *tion on how to participate in the procurements and*
21 *collaborative research, including how to submit effec-*
22 *tive proposals;*

23 (4) *increase the awareness inside the National*
24 *Laboratory or facility of the capabilities and opportu-*
25 *nities presented by small business concerns, and*

1 (5) *establish guidelines for the program under*
 2 *subsection (b) and report on the effectiveness of such*
 3 *program to the Director of the National Laboratory*
 4 *or facility.*

5 (b) *ESTABLISHMENT OF SMALL BUSINESS ASSIST-*
 6 *ANCE PROGRAM.—The Secretary shall direct the Director*
 7 *of each National Laboratory, and may direct the Director*
 8 *of each facility the Secretary determines to be appropriate,*
 9 *to establish a program to provide small business concerns—*

10 (1) *assistance directed at making them more ef-*
 11 *fective and efficient subcontractors or suppliers to the*
 12 *National Laboratory or facility; or*

13 (2) *general technical assistance, the cost of which*
 14 *shall not exceed \$10,000 per instance of assistance, to*
 15 *improve the small business concern's products or serv-*
 16 *ices.*

17 (c) *USE OF FUNDS.—None of the funds expended*
 18 *under subsection (b) may be used for direct grants to the*
 19 *small business concerns.*

20 **SEC. 5. TECHNOLOGY PARTNERSHIPS OMBUDSMAN.**

21 (a) *APPOINTMENT OF OMBUDSMAN.—The Secretary*
 22 *shall direct the Director of each National Laboratory, and*
 23 *may direct the Director of each facility the Secretary deter-*
 24 *mines to be appropriate, to appoint a technology partner-*
 25 *ship ombudsman to hear and help resolve complaints from*

1 *outside organizations regarding each laboratory's policies*
2 *and actions with respect to technology partnerships (includ-*
3 *ing cooperative research and development agreements), pat-*
4 *ents, and technology licensing. Each ombudsman shall—*

5 *(1) be a senior official of the National Labora-*
6 *tory or facility who is not involved in day-to-day*
7 *technology partnerships, patents, or technology licens-*
8 *ing, or, if appointed from outside the laboratory,*
9 *function as such a senior official; and*

10 *(2) have direct access to the Director of the Na-*
11 *tional Laboratory or facility.*

12 *(b) DUTIES.—Each ombudsman shall—*

13 *(1) serve as the focal point for assisting the pub-*
14 *lic and industry in resolving complaints and disputes*
15 *with the laboratory regarding technology partner-*
16 *ships, patents, and technology licensing;*

17 *(2) promote the use of collaborative alternative*
18 *dispute resolution techniques such as mediation to fa-*
19 *cilitate the speedy and low-cost resolution of com-*
20 *plaints and disputes, when appropriate; and*

21 *(3) report, through the Director of the National*
22 *Laboratory or facility, to the Department annually*
23 *on the number and nature of complaints and disputes*
24 *raised, along with ombudsman's assessment of their*

1 *resolution, consistent with the protection of confiden-*
 2 *tial and sensitive information.*

3 (c) *DUAL APPOINTMENT.*—*A person vested with the*
 4 *small business advocacy function of section 4 may also serve*
 5 *as the technology partnership ombudsman.*

6 **SEC. 6. STUDIES RELATED TO IMPROVING MISSION EFFEC-**
 7 **TIVENESS, PARTNERSHIPS, AND TECH-**
 8 **NOLOGY TRANSFER AT NATIONAL LABORA-**
 9 **TORIES.**

10 (a) *STUDIES.*—*The Secretary shall direct the Labora-*
 11 *tory Operations Board to study and report to him, not later*
 12 *than one year after the date of enactment of this section,*
 13 *on the following topics.*

14 (1) *the possible benefits from the need for policies*
 15 *and procedures to facilitate the transfer of scientific,*
 16 *technical, and professional personnel among National*
 17 *Laboratories and facilities; and*

18 (2) *the possible benefits from and need for*
 19 *changes in—*

20 (A) *the indemnification requirements for*
 21 *patents or other intellectual property licensed*
 22 *from a National Laboratory or facility;*

23 (B) *the royalty and fee schedules and types*
 24 *of compensation that may be used for patents or*
 25 *other intellectual property licensed to a small*

1 *business concern from a National Laboratory or*
2 *facility;*

3 (C) *the licensing procedures and require-*
4 *ments for patents and other intellectual property;*

5 (D) *the rights given to small business con-*
6 *cern that has licensed a patent or other intellec-*
7 *tual property from a National Laboratory or fa-*
8 *cility to bring suit against third parties infring-*
9 *ing such intellectual property;*

10 (E) *the advance funding requirements for*
11 *small business concern funding a project at a*
12 *National Laboratory or facility through a*
13 *Funds-In-Agreement;*

14 (F) *the intellectual property rights allocated*
15 *to a business when it is funding a project at a*
16 *National Laboratory or facility through a*
17 *Funds-In-Agreement; and*

18 (G) *policies on royalty payments to inven-*
19 *tors employed by a contractor-operated National*
20 *Laboratory or facility, including those for inven-*
21 *tions made under a Funds-In-Agreement.*

22 (b) *DEFINITION.—For the purposes of this section, the*
23 *term “Funds-In-Agreement” means a contract between the*
24 *Department and a non-Federal organization where that or-*

ganization pays the Department to provide a service or material not otherwise available in the domestic private sector.

(c) *REPORT TO CONGRESS.*—Not later than one month after receiving the report under subsection (a), the Secretary transmit the report, along with this recommendations for action and proposals for legislation to implement the recommendations, to Congress.

SEC. 7. OTHER TRANSACTIONS AUTHORITY.

(a) *NEW AUTHORITY.*—Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following new subsection:

“(g) *OTHER TRANSACTIONS AUTHORITY.*—(1) In addition to other authorities granted to the Secretary to enter into procurement contracts, leases, cooperative agreements, grants, and other similar arrangements, the Secretary may enter into other transactions with public agencies, private organizations, or persons on such terms as the Secretary may deem appropriate in furtherance of basic, applied, and advanced research functions now or hereafter vested in the Secretary. Such other transactions shall not be subject to the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908).

“(2)(A) The Secretary of Energy shall ensure that—

1 “(i) to the maximum extent practicable, no
2 transaction entered into under paragraph (1) pro-
3 vides for research that duplicates research being con-
4 ducted under existing programs carried out by the
5 Department of Energy; and

6 “(ii) to the extent that the Secretary determines
7 practicable, the funds provided by the Government
8 under a transaction authorized by paragraph (1) do
9 not exceed the total amount provided by other parties
10 to the transaction.

11 “(B) A transaction authorized by paragraph (1) may
12 be used for a research project when the use of a standard
13 contract, grant, or cooperative agreement for such project
14 is not feasible or appropriate.

15 “(3)(A) The Secretary shall not disclose any trade se-
16 cret or commercial or financial information submitted by
17 a non-Federal entity under paragraph (1) that is privileged
18 and confidential.

19 “(B) The Secretary shall not disclose, for five years
20 after the date the information is received, any other infor-
21 mation submitted by a non-Federal entity under paragraph
22 (1), including any proposal, proposal abstract, document
23 supporting a proposal, business plan, or technical informa-
24 tion that is privileged and confidential.

1 “(C) *The Secretary may protect from disclosure, for*
 2 *up to five years, any information developed pursuant to*
 3 *a transaction under paragraph (1) that would be protected*
 4 *from disclosure under section 552(b)(4) of title 5, United*
 5 *States Code, if obtained from a person other than a Federal*
 6 *agency.”.*

7 (b) *IMPLEMENTATION.—Not later than six months*
 8 *after the date of enactment of this section, the Department*
 9 *shall establish guidelines for the use of other transactions.*
 10 *Other transactions shall be made available, if needed, in*
 11 *order to implement projects funded under section 3.*

12 **SEC. 8. CONFORMANCE WITH NNSA ORGANIZATIONAL**
 13 **STRUCTURE.**

14 *All actions taken by the Secretary in carrying out this*
 15 *Act with respect to National Laboratories and facilities that*
 16 *are part of the NNSA shall be through the Administrator*
 17 *for Nuclear Security in accordance with the requirements*
 18 *of Title XXXII of National Defense Authorization Act of*
 19 *Fiscal Year 2000.*

20 **SEC. 9. COOPERATIVE RESEARCH AND DEVELOPMENT**
 21 **AGREEMENTS FOR GOVERNMENT-OWNED,**
 22 **CONTRACTOR-OPERATED LABORATORIES.**

23 (a) *STRATEGIC PLANS.—Subsection (a) of section 12*
 24 *of the Stevenson-Wydler Technology Innovation Act of 1980*
 25 *(15 U.S.C. 3710a) is amended by striking “joint work state-*

1 ment,” and inserting “joint work statement or, if permitted
 2 by the agency, in an agency-approved annual strategic
 3 plan,”.

4 (b) *EXPERIMENTAL FEDERAL WAIVERS.*—Subsection
 5 (b) of that section is amended by adding at the end the
 6 following new paragraph:

7 “(6)(A) *In the case of a Department of Energy*
 8 *laboratory, a designated official of the Department of*
 9 *Energy may waive any license retained by the Gov-*
 10 *ernment under paragraph (1)(A), (2), or (3)(D), in*
 11 *whole or in part and according to negotiated terms*
 12 *and conditions, if the designated official finds that*
 13 *the retention of the license by the Department of En-*
 14 *ergy would substantially inhibit the commercializa-*
 15 *tion of an invention that would otherwise serve an*
 16 *important federal mission.*

17 “(B) *The authority to grant a waiver under sub-*
 18 *paragraph (A) shall expire on the date that is 5 years*
 19 *after the date of the enactment of the National Defense*
 20 *Authorization Act for Fiscal Year 2001.*

21 “(C) *The expiration under subparagraph (B) of*
 22 *authority to grant a waiver under subparagraph (A)*
 23 *shall not effect any waiver granted under subpara-*
 24 *graph (A) before the expiration of such authority.”.*

1 (c) *TIME REQUIRED FOR APPROVAL.*—Subsection
2 (c)(5) of that section is amended—

3 (1) by striking subparagraph (C);

4 (2) by redesignating subparagraph (D) as sub-
5 paragraph (C); and

6 (3) in subparagraph (C) as so redesignated—

7 (A) in clause (i)—

8 (i) by striking “with a small business
9 firm”; and

10 (ii) by inserting “if” after “state-
11 ment”; and

12 (B) by adding at the end the following new
13 clauses:

14 “(iv) Any agency that has contracted
15 with a non-Federal entity to operate a lab-
16 oratory may develop and provide to such
17 laboratory one or more model cooperative
18 research and development agreements, for
19 the purposes of standardizing practices and
20 procedures, resolving common legal issues,
21 and enabling review of cooperative research
22 and development agreements to be carried
23 out in a routine and prompt manner.

24 “(v) A Federal agency may waive the
25 requirements of clause (i) or (ii) under such

1 *circumstances as the agency considers ap-*
 2 *propriate. However, the agency may not*
 3 *take longer than 30 days to review and ap-*
 4 *prove, request modifications to, or dis-*
 5 *approve any proposed agreement or joint*
 6 *work statement that it elects to receive.”.*

7 **SEC. 10. COOPERATIVE RESEARCH AND DEVELOPMENT OF**
 8 **THE NATIONAL NUCLEAR SECURITY ADMINIS-**
 9 **TRATION.**

10 (a) *OBJECTIVE FOR OBLIGATION OF FUNDS.—It shall*
 11 *be an objective of the Administrator of the National Nuclear*
 12 *Security Administration to obligate funds for cooperative*
 13 *research and development agreements (as that term is de-*
 14 *finied in section 12(d)(1) of the Stevenson-Wydler Tech-*
 15 *nology Innovation Act of 1980 (15 U.S.C. 3710a(d)(1))),*
 16 *or similar cooperative, cost-shared research partnerships*
 17 *with non-Federal organizations, in a fiscal year covered by*
 18 *subsection (b) in an amount at least equal to the percentage*
 19 *of the total amount appropriated for the Administration*
 20 *for such fiscal year that is specified for such fiscal year*
 21 *under subsection (b).*

22 (b) *FISCAL YEAR PERCENTAGES.—The percentages of*
 23 *funds appropriated for the National Nuclear Security Ad-*
 24 *ministration that are obligated in accordance with the ob-*
 25 *jective under subsection (a) are as follows:*

1 (1) *In each of fiscal years 2001 and 2002, 0.5*
2 *percent.*

3 (2) *In any fiscal year after fiscal year 2002, the*
4 *percentage recommend by the Administrator for each*
5 *such fiscal year in the report under subsection (c).*

6 (c) *RECOMMENDATIONS FOR PERCENTAGES IN LATER*
7 *FISCAL YEARS.*—*Not later than one year after the date of*
8 *the enactment of this Act, the Administrator shall submit*
9 *to the congressional defense committees a report setting*
10 *forth the Administrator's recommendations for appropriate*
11 *percentages of funds appropriated for the National Nuclear*
12 *Security Administration to be obligated for agreements de-*
13 *scribed in subsection (a) during each fiscal year covered by*
14 *the report.*

15 (d) *CONSISTENCY OF AGREEMENTS.*—*Any agreement*
16 *entered into under this section shall be consistent with and*
17 *in support of the mission of the National Nuclear Security*
18 *Administration.*

19 (e) *REPORTS ON ACHIEVEMENT OF OBJECTIVE.*—(1)
20 *Not later than March 30, 2002, and each year thereafter,*
21 *the Administrator shall submit to the congressional defense*
22 *committees a report on whether funds of the National Nu-*
23 *clear Security Administration were obligated in the fiscal*
24 *year ending in the preceding year in accordance with the*
25 *objective for such fiscal year under this section.*

1 (2) *If funds were not obligated in a fiscal year in ac-*
2 *cordance with the objective under this section for such fiscal*
3 *year, the report under paragraph (1) shall—*

4 (A) *describe the actions the Administrator pro-*
5 *poses to take to ensure that the objective under this*
6 *section for the current fiscal year and future fiscal*
7 *years will be met; and*

8 (B) *include any recommendations for legislation*
9 *required to achieve such actions.*

Calendar No. 936

106TH CONGRESS
2D SESSION

S. 1756

[Report No. 106-487]

A BILL

To enhance the ability of the National Laboratories
to meet Department of Energy missions, and for
other purposes.

OCTOBER 4 (legislative day, SEPTEMBER 22), 2000

Reported with an amendment